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**MEMORANDUM OF LAW**

**DATE:** September 14, 2017  
**TO:** Councilmember Barbara Bry  
**FROM:** City Attorney  
**SUBJECT:** Timing of Election for Soccer City Citizens' Initiative

**INTRODUCTION**

On June 19, 2017, the San Diego City Council (Council) adopted a resolution of intent to place the San Diego River Park and Soccer City Initiative (Soccer City initiative) on the November 2018 ballot. San Diego Resolution R-311183 (June 19, 2017). The resolution confirms the Council's intention to submit the initiative to voters on that ballot, but did not operate to place it on the ballot. The Council later will be asked to adopt an ordinance that actually places the measure on the ballot, but it can vote on that ordinance only after the November 2018 election has been called.

You have asked whether the timing of the election for the Soccer City initiative may be affected by Council action on other ballot measures. Your specific question is addressed below. This memorandum considers the timing of the Soccer City initiative election without regard to the specific content of any hypothetical measure. Such measures and their potential content may raise other legal issues that cannot be addressed without more information.<sup>1</sup>

**QUESTION PRESENTED**

If the Council places a convention center measure on the June 2018 ballot, is the Soccer City initiative measure entitled to go on the same ballot or does it have to stay on the November 2018 ballot?

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<sup>1</sup> This memorandum does not consider the recent California Supreme Court decision regarding the timing of elections for citizen-initiated tax measures and its potential extension to other citizens' initiative measures. *California Cannabis Coalition v. City of Upland*, No. S234148, 2017 WL 3706533 (Cal. Aug. 28, 2017). We do not anticipate that the opinion will change the following analysis. Our Office will provide any relevant updates.

## SHORT ANSWER

No, the Soccer City initiative is not entitled to go on a specific ballot, as long as its placement on a ballot meets Charter requirements. The Council has sole authority to decide when a municipal ballot measure will be submitted to voters, subject to governing law. San Diego Charter (Charter) § 23; San Diego Municipal Code (SDMC or Municipal Code) §§ 27.1034, 27.1035 and 27.1037. The decision regarding when to submit an initiative measure to voters thus is within the discretion of the Council, not initiative proponents.

The Council adopted a resolution of intent to submit the Soccer City initiative to voters on the November 2018 ballot, but left open the possibility that the Council could later decide to place the measure on an earlier ballot. This complies with the Charter. Nothing prevents the Council from docketing an item to rescind the resolution and voting to adopt a new resolution expressing an intent to submit the initiative to voters in June 2018.

The Charter and the City's Election Code do not direct that the timing of an initiative election must be considered in relation to the timing of any other measure. Each ballot measure is considered separately and may be subject to different law (see below). The content of a potential new measure, however, may create other legal issues. Without more information about its content, we cannot opine further as to whether other legal issues may arise that could be argued to affect the timing of a given election.

## DISCUSSION

### **THE COUNCIL DECIDES WHEN TO SUBMIT BALLOT MEASURES TO VOTERS, SUBJECT TO THE CITY'S ELECTION LAWS**

The Charter and the City's Election Code (found in the Municipal Code) direct how ballot measures are handled by the Council and the ballots on which they may be placed.<sup>2</sup>

#### **A. The Charter Expresses a Different Intention for the Timing of Elections on Citizen's Initiative and Referendum Measures than it Does for City-Generated Measures**

Article II, section 11(a) of the California Constitution provides that local initiative and referendum powers may be exercised by city and county voters as provided by the Legislature or by charter. Charter section 23 expresses a preference for when an initiative or referendum measure is to be submitted to voters, but leaves the Council other options:

Initiative measures and referendum measures that qualify for the ballot after the people's petition process, and in compliance with provisions of this Charter and the City's Election Code Ordinance, shall be submitted to the electorate at a Municipal Special Election consolidated with the next City-wide Municipal General Election

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<sup>2</sup> This memorandum does not address Charter amendment measures, which are governed by California law. All references to ballot measures are to municipal measures that do not involve Charter amendments.

ballot on which the measures legally can be placed, or at a City-wide Municipal Special Election held prior to that general election.<sup>3</sup>

Charter § 23.

Thus, the Charter expresses a preference approved by the voters that initiative and referendum measures appear on a November general election ballot, but the Council remains free to submit such measures to voters on an earlier ballot if desired and there is legally sufficient time to do so.

Charter section 23 provides complete flexibility for the timing of elections on all other municipal ballot measures, with the exception of Charter amendment measures (governed by California law). The following provision of section 23 applies to any ballot measure initiated without voter signatures, including all measures drafted and created by the Mayor or Council for submission to voters:

All other municipal ballot measures may be submitted to the electorate at a Municipal Special Election that may be consolidated with the next City-wide Municipal Primary Election or Municipal General Election, or at any City-wide special election held for that purpose.

Charter amendment measures and the timing of their submission to the electorate are governed by California law.

Charter § 23.

#### **B. Resolutions of Intent Do Not Operate to “Place” a Measure on a Ballot**

When voter signatures are sufficient to qualify an initiative measure, the Council must decide whether to: (1) grant the initiative petition and adopt its provisions in full, or (2) adopt a resolution of intention to submit the matter to the voters at a special election. SDMC §§ 27.1034 and 27.1035. In the case of the Soccer City initiative, the Council decided to adopt a resolution of intention to submit the matter to voters in November 2018.

Significantly, however, a resolution of intent does not operate to “place” the measure on a ballot, but just expresses an intention to do so. After a given election has been called, the Council adopts ordinances to place individual measures on that ballot. Thus, the measure has not yet been placed on a ballot and additional action will be required to do so. The City Attorney’s Office will prepare an ordinance for Council consideration after the November 2018 election has been called. Until that time, the Council is free to revisit the decision.

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<sup>3</sup> We note that the term “special election” is used for all ballot measure elections. The term “Municipal Special Election” means an election to consider ballot measures that can be consolidated with a June primary or November general election, or that can be held as a standalone election.

### **C. Ballot Measures Are Considered Separately with Regard to Their Timing**

As set forth above, each ballot measure is considered separately as each may be subject to different law. As discussed, initiatives and referenda are placed on the ballot in compliance with a different provision of Charter section 23 than other ballot measures.

Given the different treatment of ballot measures, San Diego's election laws do not direct that ballot measures be placed on the same ballot as any other particular measure, and each measure is the subject of a separate ordinance placing it on a ballot. The City's Election Code confirms that any number of legislative acts proposed by initiative petitions or directly by the Council may be submitted to the voters at a single election. SDMC §27.1042. The Council's decision to submit a given measure to a given ballot rests in its discretion, so long as the decision complies with the City's election laws.

We also note that initiative proponents may decide to seek court action to attempt to compel a different result. Although your question asked about a convention center measure, we have not seen the content of a potential future measure. This memorandum does not address whether the timing of measures that have overlapping or conflicting provisions may raise other legal issues. For these reasons, we cannot opine further at this time.

### **CONCLUSION**

The Council has sole authority to decide when the Soccer City initiative will appear on a ballot, subject to governing law. Charter § 23; SDMC §§ 27.1034, 27.1035 and 27.1037. The resolution of intent that the Council adopted to submit the Soccer City initiative to voters in November 2018 did not operate to place the measure on the ballot. The Council is free to rescind the resolution and adopt a new resolution expressing an intent to submit the initiative to voters in June 2018. The Soccer City initiative will not be placed on a ballot until the Council has approved an ordinance to do so, which cannot occur until after the given election has been called.

The City's election laws do not require the Soccer City initiative to be heard on a given ballot because another measure will or will not be on the same ballot. The content of a potential new measure, however, may create other legal issues.

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By /s/ Sharon B. Spivak  
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cc: Elizabeth Maland, City Clerk  
Honorable Mayor and Councilmembers